

1 question?

2 A. Like I keep saying, I wasn't inside the house to
3 see if Polson shot him or not.

4 THE COURT: All right. Proceed, Mr.
5 Arntz.

6 BY MR. ARNTZ:

7 Q. Was there any discussion of penalties for this
8 homicide when you were talking with Detective Lawson?

9 A. I think 20 to life.

10 Q. So the answer is yes?

11 A. Pretty sure.

12 Q. And who would it have been, who mentioned 20 to
13 life to you during the interview?

14 A. Wade Lawson.

15 Q. And did Detective Wade Lawson also tell you that
16 it would look better for you if you made a statement on
17 video?

18 A. He told me it would, would look better for my
19 behalf if I made a video statement.

20 Q. So the answer is, yes, he did say that to you?

21 A. Yes.

22 Q. And did Detective Wade Lawson tell you that it
23 would be better for you if you talked to him?

24 A. Yes.

25 Q. And were you given any advice by Detective Wade

1 Lawson about what to say on this videotape before the
2 videotape interview began?

3 A. Just the truth.

4 Q. Well, did he write any notes out on a piece of
5 paper which you used to refer to in making your
6 statement on the videotaped interview?

7 A. No.

8 Q. Do you remember testifying under oath last year
9 that you were given advice what to say on the videotaped
10 interview?

11 A. Yeah, I said that just to clear my own name.

12 Q. That was another lie under oath in order to try
13 to help yourself?

14 A. Right.

15 Q. That would be, I think, lie number six now, am I
16 right?

17 A. Right. A person is going to say anything to try
18 to get that statement suppressed.

19 Q. The person who is desperate will say anything to
20 try to help himself out, wouldn't he? Is that what you
21 said?

22 A. I'm saying, trying to get rid of that video
23 statement. You can't win a trial with a statement like
24 that.

25 Q. So the statement you made last year that

1 Detective Lawson had written some notes out for you for
2 your videotaped interview was another lie?

3 MR. SLAVENS: Object, your Honor. Asked
4 and answered.

5 THE COURT: I believe that one has.
6 Sustained.

7 BY MR. ARNTZ:

8 Q. And do you recall testifying last year that the
9 detectives wanted to make sure your story matched
10 Walter's so they could get Weston?

11 A. I remember saying that, but it's not true.

12 Q. And do you remember testifying under oath last
13 year that the detectives wanted you to make sure your
14 story matched Walters so they could get Weston because
15 at that time Weston really wasn't saying anything?

16 A. I remember saying that. It's not true.

17 Q. Now your interview with Detective Wade Lawson
18 began at 4:59 in the morning, is that right?

19 A. That's when we started talking, yeah.

20 Q. All right. And we know that because that's the
21 time on State's Exhibit 72 in front of you, isn't it?

22 A. Right.

23 Q. Did Detective Wade Lawson promise to try to work
24 out a deal for you the same day that you made the
25 videotaped interview?

1 A. No, he did not.

2 Q. Do you recall testifying under oath last year
3 that in fact he did offer to make a deal for you on that
4 very same day?

5 A. I remember saying that.

6 Q. And that was another lie?

7 A. Right.

8 Q. More perjury?

9 A. Yep.

10 Q. And there in fact came a time that you did submit
11 to a videotaped interview with Detective Wade Lawson,
12 didn't you?

13 A. Right.

14 Q. And that was in the presence of, I think it was,
15 Detective Spells as well?

16 A. Correct.

17 Q. And that was with your knowledge and your
18 consent, is that true?

19 A. Right.

20 Q. And you were aware at all times that that
21 videotape camera was operating when you were speaking
22 with Detective Wade Lawson at that time?

23 A. Yes.

24 MR. ARNTZ: I think this would be
25 appropriate time to move to play the video.

1 THE COURT: Ladies and gentlemen of the
2 jury, we are going to play a videotape statement made
3 by this witness. It's been marked as a Joint Exhibit
4 Roman Numeral I for the record. And you'll note that
5 towards the end of the videotaped statement the Court
6 will eliminate from your hearing a very brief period
7 of time. There is a conversation as to something that
8 is not relevant to this trial, so just disregard that.
9 I will be responsible to make sure you don't hear
10 that. But other than that, we'll go ahead and proceed
11 with the playing of the videotape.

12 (WHEREUPON the videotape was played.)

13 BY MR. ARNTZ:

14 Q. Mr. Elofskey, you recognized what we just viewed
15 was the videotape of the interview you conducted with
16 Detective Wade Lawson, isn't that correct?

17 A. Correct.

18 Q. All right. And to be clear about this, you had
19 an oral interview with Detective Wade Lawson before this
20 videotaped interview was created, didn't you?

21 A. Yes.

22 Q. And some amount of time passed between the oral
23 interview and the videotaped interview, didn't it?

24 A. Yes.

25 Q. How much time was that?

1 A. A couple of hours.

2 Q. A couple hours passed.

3 What were you doing during that couple hours
4 between the first and second interview?

5 A. Sitting in the room.

6 Q. Were you thinking about what you would say on the
7 videotaped interview?

8 A. Not really. Mainly had my head down on the table
9 trying to go to sleep.

10 Q. And on that videotaped interview we just watched,
11 you saw yourself telling Detective Lawson that you
12 didn't even know Lee's last name, didn't you?

13 A. I seen that.

14 Q. And you saw yourself telling Detective Lawson
15 that the guy, Mark McDonald got out and was talking to
16 us. You heard yourself say that word?

17 A. Yes.

18 Q. And you heard -- you testified today that Lee
19 Howe said to you, now? now? now? before he fired a gun
20 out your car window, do you remember that?

21 A. Yeah.

22 Q. And on the videotape interviewed you don't see
23 yourself saying that, do you?

24 A. I think I said something of that nature.

25 Q. You told us this morning you folks went to three

1 or four different locations to try to use that Green
2 Machine card, is that right?

3 A. Yes.

4 Q. On the videotaped interview you saw yourself
5 mentioning only the Oregon District and the Woodman
6 Drive area?

7 A. Right.

8 Q. And this morning you weren't sure whether you
9 told the story about everyone laughing about the first
10 incident afterwards and you saw yourself telling that
11 story on the videotape, didn't you?

12 A. Yes.

13 Q. And also this morning you weren't sure whether
14 you had told the story that Lee had shoved
15 Mr. McDonald's face down to the, the ground but you saw
16 yourself saying that on the videotaped interview, didn't
17 you?

18 A. Yes.

19 Q. And this morning you said you were unsure whether
20 Walt Polson carried a gun with him every day but you saw
21 yourself on the videotape telling Detective Wade Lawson
22 that Walter Polson did carry his gun every day, didn't
23 you?

24 A. Yes.

25 Q. Also on the videotaped interview you saw yourself

1 seated next to Detective Lawson while he was asking you
2 questions, didn't you?

3 A. Right.

4 Q. And you saw that he had his legs crossed and a
5 pad of some kind on his leg, didn't you?

6 A. Right.

7 Q. And he would be looking at his notes from time to
8 time while he was asking you questions on the videotape,
9 wasn't he?

10 A. Right.

11 Q. And you had your head down and you were looking
12 over at that pad yourself from time to time on that
13 videotaped interview, weren't you?

14 A. I couldn't see the pad, what was written on it.

15 Q. Are you denying that you looked at what was on
16 the pad while you were answering questions for Detective
17 Lawson during the videotaped interview?

18 A. I answered them questions. I didn't read them
19 off this, the --

20 Q. If you testified under oath last year you were
21 reading notes off of Detective Lawson's pad during the
22 videotaped interview, that would be another lie?

23 A. I said that just to try to get that videotape
24 erased.

25 Q. When you said it, it was a lie, wasn't it?

1 A. Right. At that time it was.

2 Q. That was lie number eight under oath?

3 A. I think you got that already marked down.

4 Q. Then when the interview was concluded, you told
5 the story earlier that Detective Lawson had suggested
6 that he could get a deal for you but today you say that
7 was a lie as well?

8 A. Correct.

9 Q. Your interview that we just watched occurred on
10 June 23rd, is that correct?

11 A. Correct.

12 Q. And on June 24th did you have any contact with
13 Detective Lawson?

14 A. I might have.

15 Q. Did you testify under oath here last year that
16 Detective Lawson came to see you the very next day on
17 June 24th without any warning?

18 A. He came to see me a couple of days while I was in
19 there.

20 Q. Did you testify that he came to see you in order
21 to talk to you about working out some kind of a deal?

22 A. That was a lie I told the Court.

23 Q. And that was another lie you told under oath in
24 order to help yourself?

25 A. Right.

1 Q. That would be perjury number nine?

2 MR. SLAVENS: Objection to that, your
3 Honor.

4 A. However many it is.

5 THE COURT: Overrule the objection.

6 BY MR. ARNTZ:

7 Q. Excuse me?

8 A. I said how many ever it is.

9 Q. If we counted up to eight now, this would be
10 number nine, wouldn't it?

11 A. I guess.

12 Q. And when Detective Lawson came to see you the
13 next time at the county jail, he was talking to you
14 about other murders that had occurred in Dayton, wasn't
15 he?

16 A. Yes.

17 Q. He was asking you questions about at least one
18 murder that occurred more than a year before this
19 incident on June 22d, wasn't he?

20 A. Yes.

21 Q. And later on he was asking you questions about
22 east side burglaries that had occurred in the past,
23 wasn't he?

24 A. Yes.

25 Q. And this was all within a very few days of your

1 June 23rd videotaped interview, wasn't it?

2 A. Sometime around there.

3 Q. And then there came a time when you began to send
4 written request forms asking that Detective Lawson come
5 speak to you again, isn't that true?

6 A. Correct.

7 Q. And how many times did you do that?

8 A. I don't know. Ten times to a dozen.

9 Q. I'm sorry?

10 A. Ten times to a dozen.

11 Q. Ten times you asked to talk to Detective Lawson
12 further about this?

13 A. Yes.

14 MR. SLAVENS: Objection, he's answered
15 it.

16 THE COURT: Sustain the objection as to
17 the repetition.

18 BY MR. ARNTZ:

19 Q. And in fact, when you began to fill out these
20 written request forms, you wanted to see Detective
21 Lawson with some urgency, didn't you?

22 A. I just wanted to talk to him.

23 Q. You say you merely wanted to talk to Detective
24 Lawson, there wasn't any urgency involved?

25 A. It wasn't no emergency, if that's what you're

1 trying to get it.

2 Q. I'm using the word urgency. Do you know what
3 that means?

4 A. No.

5 Q. That you were interested in seeing him as soon as
6 possible?

7 A. I wrote on the couple of jail request forms that
8 I wanted to see him. You know, sometimes I wrote as
9 soon as possible, you know.

10 Q. Are you finished?

11 A. Yeah.

12 Q. Do you recall writing that you also wanted to see
13 him very soon?

14 A. I don't know what I wrote. That's been almost
15 eight months.

16 Q. Okay. I show you what's been marked now as
17 Defendant's Exhibits B and C, and ask you to look at
18 those two pages and tell us what those are, if you know?

19 A. Jail request forms.

20 Q. And to be accurate, that is a copy of four
21 different jail request forms, isn't it?

22 A. Only three are mine.

23 Q. Only three of them are yours. And which one of
24 them is not yours?

25 A. This one right here.

1 MR. SLAVENS: Objection, your Honor.

2 THE COURT: Overruled.

3 MR. SLAVENS: May we see them?

4 A. You can tell it's not mine. Look at the jacket
5 number on it.

6 BY MR. ARNTZ:

7 Q. Do Exhibits B and C appear to be a true and
8 accurate copies of the jail request forms which you're
9 familiar with?

10 A. They're jail request forms. You can get them any
11 time in jail.

12 Q. But the ones that you say are yours, are Xerox
13 copies of the original, aren't they?

14 A. Yeah.

15 Q. And these are true and accurate copies of the
16 original, aren't they?

17 A. Yeah.

18 Q. In other words, no changes have been made in what
19 was written there --

20 A. Right.

21 Q. -- is that correct?

22 Now on June 26th, that would be three days after
23 your videotaped interview with Detective Wade Lawson,
24 you sent a written request form out asking to speak to
25 T.G. Lawson very soon, am I right?

1 A. That ain't mine.

2 Q. That's the one you say is not yours?

3 A. Correct.

4 Q. Someone write this on your behalf?

5 A. I don't know but that's not my jacket number. My
6 jacket number is 6605-92, that's 88112-92.

7 Q. You deny trying to reach Detective Lawson on June
8 26, 1992?

9 A. I might have tried to reach him but that ain't
10 mine.

11 Q. And, likewise, on July 11, 1992, you sent out a
12 jail request form which said, I wish to see Detective
13 T.G. Lawson, correct?

14 A. Correct.

15 Q. And, likewise, three days later on July 14th you
16 sent out another form saying, Detective T.G. Lawson, I
17 would like to talk to you as soon as possible, is that
18 right?

19 A. Correct.

20 Q. And one day later on July 15th you sent another
21 request form indicating you wanted to speak to T.G.
22 Lawson?

23 A. Correct.

24 Q. And so you say three of these are yours but the
25 fourth is not?

1 A. Right.

2 Q. And you also say you did this 10 or 11 times?

3 A. Sometime around there.

4 Q. And you wanted to see Detective Lawson in order
5 to talk about making a deal for yourself, isn't that
6 correct?

7 A. Correct.

8 Q. In fact, what was on your mind is discussing plea
9 bargaining with him, isn't that true?

10 A. Correct. But he told me he ain't the one to set
11 up the plea bargaining. I would have to go through my
12 lawyers to get to talk to the prosecutor about that.

13 Q. And which Detective Lawson are we talking about
14 now?

15 A. Tom Lawson.

16 Q. And that's the Detective Lawson who is sitting at
17 counsel table today?

18 A. Yes.

19 Q. And when would it have been, as best you can
20 tell, that this Detective Lawson told you that he
21 couldn't make any deal with you, you would have to make
22 your deal with the prosecutor?

23 A. Do what now?

24 Q. Well, we've already reviewed at least four dates
25 that you asked to see, three or four that you asked to

1 see the detectives, correct?

2 A. Correct.

3 Q. Which of those meetings would it have been that
4 Detective Lawson said you can't make a deal with me, you
5 have to make your deal with the prosecutor?

6 MR. SLAVENS: Objection, your Honor.

7 It's not what the witness said. He said he had to
8 talk to his lawyer.

9 THE COURT: I will sustain it as to the
10 form.

11 BY MR. ARNTZ:

12 Q. When was it Detective Lawson told you that you
13 had to make your deal through your lawyers?

14 A. I don't really, really don't know. It's been so
15 long ago, I forgot.

16 Q. If I said that you met with Detective Lawson on
17 June 28th, would that be true or untrue?

18 MR. SLAVENS: Objection, your Honor.

19 THE COURT: Overruled.

20 A. Like I said, I don't remember what dates I met
21 with him, what dates I didn't.

22 Q. All right. You can't deny that you met with him
23 on the 28th?

24 MR. SLAVENS: Objection, your Honor.

25 A. Maybe I did and maybe I didn't.

1 Q. Likewise, you don't deny that you met with him
2 the very next day on June 29th, do you?

3 A. I met with him a couple five or six times. I
4 don't remember which dates.

5 Q. All right. So you don't deny June 29th, do you?

6 A. I'm not saying I did and I'm not saying I didn't.
7 I'm saying I don't know.

8 Q. Likewise, you can't deny that you met with
9 Detective Lawson the very next day? Again, there is the
10 third day in, in a row, June 30th, am I correct?

11 A. Like I said, maybe I met with him, maybe I
12 didn't.

13 Q. And, likewise, you met with him again on July
14 23rd, is that right?

15 A. Same answer, I don't know.

16 Q. But you don't deny meeting with him on July 23rd,
17 do you?

18 A. I don't admit to it. I don't admit I didn't.

19 Q. Now each and every time you met with Detective
20 Lawson, regardless of what the dates were, there was a
21 discussion about whether or not you could get a plea
22 bargain in your own case, isn't that true?

23 A. Correct.

24 Q. And you're telling us that Detective Lawson said
25 you would have to make your plea bargain through your

1 lawyers, not with me?

2 A. Right.

3 Q. Then why would it be you kept asking him whether
4 he could make a plea bargain with you if the answer was
5 always the same?

6 A. 'Cause if he's on my side, maybe I could get a
7 better plea bargain than him not being on my side.

8 Q. You thought Detective Lawson was on your side,
9 didn't you?

10 A. Yeah.

11 Q. And you wanted to keep him on your side, didn't
12 you?

13 A. Correct.

14 Q. By telling him what he wanted to hear, didn't
15 you?

16 A. Right.

17 Q. What he wanted to hear was that Weston Howe had
18 done the shootings?

19 A. He wanted to hear the truth.

20 Q. Well, isn't it true that originally -- strike
21 that.

22 When you talked to Detective Lawson during these
23 meetings, you, and in fact, specified to him on one
24 occasion that you wanted to get your own sentencing down
25 to 20 years if you could, isn't that right?

1 A. Twenty years or under.

2 Q. So the answer is yes?

3 A. Yeah, I did. But like I said, he can't. It's
4 between my attorneys and the prosecutor's office on the
5 deal. He couldn't help me in that.

6 Q. One time when you called him over, you were not
7 only talking about how much time you could or how little
8 time you could do but also whether you could arrange to
9 get your automobile and speakers back. Do you remember
10 that?

11 A. Yep.

12 Q. And on July 23rd when he came to see you,
13 Detective Lawson's purpose was to see whether your story
14 would stay the same or not, do you remember that?

15 MR. SLAVENS: Objection, your Honor.

16 A. I don't remember the dates.

17 THE COURT: Overruled.

18 A. Like I said, he's been over there off and on. I
19 don't remember dates.

20 BY MR. ARNTZ:

21 Q. Do you remember testifying under oath last year
22 that Detective Lawson came over to see you in order to
23 find out whether your story would stay the same or not?

24 A. I might have. I don't know.

25 Half the people in the courtroom can't remember

1 what they said eight and a half months ago.

2 Q. Well, you have had the benefit of studying police
3 reports during that eight and a half months, haven't
4 you?

5 A. Yeah. I tore them up and threw them away too.

6 Q. And when Detective Lawson would meet you this
7 number of times, you asked him, didn't you, whether he
8 wouldn't go talk to the prosecutor on your behalf?

9 A. Yeah, I did ask him. That's when he came out and
10 told me that I had to go through a lawyer.

11 Q. And on at least one occasion he told you that he
12 would see if he could, could talk to the prosecutor and
13 get a deal for you, didn't he?

14 A. My lawyers have to talk to the prosecutor to get
15 a deal.

16 Q. My question is, on at least one occasion
17 Detective Lawson told you that he would see if he could
18 get a deal for you from the prosecutor, didn't he?

19 A. I don't know.

20 Q. Do you remember testifying under oath in this
21 courtroom last year that is in fact what happened?

22 A. I remember testifying in here but I don't
23 remember half the things I said.

24 Q. Page 271. Do you remember these questions and
25 answers.

1 MR. SLAVENS: Identify the questioner,
2 please.

3 MR. ARNTZ: I believe this is Bob
4 Coughlin.

5 BY MR. ARNTZ:

6 Q. These are requests by you to see Detective T.G.
7 Lawson, correct?

8 Answer: Right.

9 And you wanted to see him again, why?

10 Answer: To see if he made a deal for me yet.

11 Question: Did he tell you that he was going to
12 make a deal for you?

13 Answer: He said he was going to -- Answer -- to
14 look into getting me a deal.

15 Do you remember that testimony?

16 MR. SLAVENS: Objection to this. It's
17 not at all similar to what his previous questions
18 were. He's talking about the prosecutor and everybody
19 else.

20 THE COURT: Well, this is
21 cross-examination for impeachment on using the prior
22 testimony. Overruled.

23 A. Repeat the question.

24 BY MR. ARNTZ:

25 Q. Do you remember the testimony I just read to you?

1 A. Like I said, if I testified to that, I must have
2 said it.

3 Q. All right. Let's assume for a minute that you
4 said it if it's in this book. And if you said it, was
5 it another lie under oath?

6 A. Probably was.

7 Q. Probably lying number ten?

8 A. Probably.

9 Q. Do you remember testifying on a second occasion
10 under oath last year that Detective Lawson promised he
11 would look into a deal with the prosecutor?

12 A. Like I said, my attorneys have to go through that
13 deal.

14 Q. So the answer is, you don't remember whether you
15 said that or not?

16 A. Right.

17 Q. And from time to time when he would come see you,
18 you would ask him what is the status of my deal, is that
19 right?

20 A. I'd ask him if he could make me a deal.

21 Q. And he would say to you, I ain't got nothing yet,
22 is that right?

23 A. He, he can't get a deal for somebody. The
24 prosecutor, it's between your lawyers, prosecutors and
25 the Judge.

1 Q. But my question to you is, when Detective Lawson
2 would come see you, did he say, say to you that he
3 didn't have anything new for you yet but he was still
4 working on it?

5 A. I don't remember.

6 Q. 290. Do you remember this testimony?

7 MR. SLAVENS: Questioner, please.

8 MR. ARNTZ: Coughlin.

9 BY MR. ARNTZ:

10 Q. Question: Would you then tell him to go ahead
11 and work on the deal?

12 Answer: No. He said -- he would come to me and
13 said, I ain't got nothing new yet. So I would go, okay.

14 Question: Did he say he would look into the
15 deal?

16 Answer: Something of that nature.

17 Question: So how many times did he tell you
18 that?

19 Answer: Every time he came over he would just
20 say, I ain't got any type of news yet on the deal but
21 I'm still working on it.

22 Question: That would be four times then?

23 Answer: Plenty of times.

24 Question: Or five depending on if he talked to
25 you about the murders, you remember, you say on Tuesday?

1 Answer: Yeah.

2 Do you remember that series of questions and
3 answers?

4 A. I don't remember half the things I said.

5 Q. Do you deny that you testified that way under
6 oath last year?

7 A. Like I said, if it's written down in that
8 transcript, I must have said it.

9 Q. And if you said that under oath last year, would
10 that be another example of perjury?

11 A. Probably.

12 Q. That would be number eleven on our list, am I
13 correct?

14 A. If that's what it adds up to.

15 Q. Now, the videotape was made with Detective Wade
16 Lawson and the meetings on those days afterwards
17 occurred with Detective Tom Lawson, is that right?

18 A. Correct.

19 Q. You first met Detective Tom Lawson briefly on the
20 very same day you made the video with Detective Wade
21 Lawson, true?

22 A. Yes. He was taking me up to the jail to be
23 booked in.

24 Q. When he was taking you up, you up to the jail to
25 book you in, you folks had a friendly conversation with

1 each other, didn't you?

2 A. We talked.

3 Q. And you took a liking to him?

4 A. What do you mean, took a liking?

5 Q. Did you two get to take a liking to each other
6 and become friendly?

7 A. Just talking.

8 Q. The answer to that is yes or no?

9 A. Answer is, we just talked, that's it.

10 Q. And the prosecutor asked you whether at some
11 point in time you obtained an attorney, do you remember
12 that?

13 A. I don't remember.

14 Q. All right. I think you told him that you had two
15 attorneys?

16 A. Yeah, I got Robert Coughlin and Rudy Wehner.

17 Q. Mr. Coughlin, one of your two attorneys, assisted
18 in negotiating your plea bargain for you?

19 A. Yes.

20 Q. And were you aware that Mr. Coughlin was a former
21 county prosecutor?

22 A. Some, some type of prosecutor up in Huber Heights
23 or something of that nature.

24 Q. You knew that, didn't you?

25 A. Yeah, he told me about, about it.

1 Q. When you were indicted, you were indicted for
2 five different counts or charges, weren't you?

3 A. Ten, to be correct.

4 Q. Ten?

5 A. Five gun specs.

6 Q. You were indicted for two aggravated murders, the
7 aggravated robberies, and one aggravated burglary, am I
8 right?

9 A. Correct.

10 Q. And you added something there, you said you had
11 gun specs as well?

12 A. There's a gun spec on each case.

13 Q. So you had a gun specification on each of these
14 four counts, didn't you?

15 A. Each five counts.

16 Q. Excuse me, five counts.

17 And what kind of a sentence did each of the gun
18 specifications carry?

19 MR. SLAVENS: Objection, your Honor.

20 THE COURT: Could I see counsel a
21 minute?

22 (WHEREUPON, a side-bar conference was held
23 off the record.)

24 THE COURT: You may proceed, Mr. Arntz.
25

1 BY MR. ARNTZ:

2 Q. I think my last question was whether you knew
3 what period of incarceration or sentence each of these
4 gun specifications carry?

5 A. I -- they carry three years a piece for each gun
6 spec, total of 15 years.

7 Q. You think that would count for a total of 15
8 years in and of itself, is that right?

9 A. Do what now?

10 Q. You think that the total of the gun
11 specifications themselves would constitute or total up
12 to 15 years?

13 A. Correct.

14 Q. How much time did the aggravated murder carry?

15 A. It carries 20 to life for each one.

16 Q. What was the maximum sentence you could receive
17 on the aggravated robbery charge?

18 A. I don't know what it carries. I think 7 to 25,
19 something like that, 10 to 25.

20 Q. You think it could be as much as 10 to 25?

21 A. Somewhere around there. I don't remember.

22 Q. Do you recall your lawyer told you it carries as
23 much as 10 to 25 as a maximum sentence?

24 A. All I remember was that murders carry 20 to life.

25 Q. You remember the 25 years was the maximum number

1 on that aggravated robbery, don't you?

2 A. I seen people get 7 to 25 and I've seen them get
3 10 to 25 in the last eight and a half months.

4 Q. You were hoping to get something like seven, were
5 you?

6 A. I was hoping to get the best.

7 Q. The best. What would be the best here?

8 A. The least amount of time.

9 Q. The least amount.

10 And what you were able to get was a dismissal of
11 both aggravated robberies, weren't you?

12 A. Correct.

13 Q. So you will never serve a sentence for that
14 aggravated robbery?

15 A. You never know. You go to the parole, they may
16 send you down for another five years.

17 Q. This Judge will never be able to sentence you for
18 that aggravated robbery?

19 A. Not that I know of.

20 Q. Because it's been dismissed for you, hasn't it?

21 A. It's still on my record as being there.

22 Q. Likewise, you will never get this extra three
23 years for the gun which was used in the first aggravated
24 robbery, will you?

25 A. I will never get no time for none of the times.

1 Q. You will never get any time for the gun involved
2 in that first aggravated murder, will you?

3 A. No. Why should I? I didn't have a gun in the
4 first place.

5 Q. And you will never catch any time at all for the
6 gun used in the second aggravated murder, will you?

7 A. Why should I get time for a gun? I didn't have a
8 gun. It's your client that had the gun.

9 Q. And you will never serve a day for that second
10 aggravated robbery or for the gun involved in that
11 second aggravated robbery, is that correct?

12 A. Correct.

13 Q. And, likewise, you will never serve one day for
14 the aggravated burglary which occurred or the gun which
15 was used when they claim that an aggravated burglary
16 occurred, am I right?

17 A. Correct.

18 But if you look at it right, you will notice that
19 if it wasn't for your client, that the most I would be
20 facing is just the two robbery charges not murder
21 charges.

22 Q. You're just a victim of circumstances, is that
23 it?

24 A. What I was saying, I was down for the robberies,
25 I wasn't down with the murder. Your client did the

1 murders.

2 Q. You were down with the robberies but not the
3 murders. Are you telling me again you pled to two
4 charges for things you didn't do?

5 A. Well, it's the state law. From what I hear, it's
6 a state law if you go along with the murder and someone
7 shoots and kills them, you're just as guilty.

8 Q. If you were convicted of everything here, you
9 could get 23, plus 23, plus 9 for 3 more guns, plus as
10 much as 25, 25, and 25 for the agg. robberies and the
11 aggravated burglaries and two life sentences over and
12 above that, am I right?

13 A. Correct.

14 Q. Have you ever added all that up?

15 A. It's, yeah, it's too much time.

16 Q. What did it come to?

17 A. About 130 years to 200 and some.

18 Q. You'd die in prison if you caught all that time,
19 wouldn't you?

20 A. Possibly.

21 Q. You didn't want that to happen, obviously?

22 A. Correct.

23 Q. And that's why you made the deal that you did?

24 A. I made the deal that I did because I didn't want
25 to try, try to get a risk of getting all that time.

1 Q. Well, you couldn't get all that time if you
2 weren't guilty of some of those things, would you?

3 A. I'm guilty of everything because I was there.

4 Q. You're guilty of all those charges but the
5 prosecutor dismissed three-fifths of it for you?

6 A. I'm guilty of the robberies, yeah, but I wasn't
7 guilty of the murders, but still, if -- since you're a
8 lawyer, you should know that.

9 Q. That's --

10 A. If you're down with a robbery, that's like
11 somebody goes in a bank, I go in the bank and some, say
12 for instance, a girl is waiting outside driving a car, I
13 go robbing the bank. I accidentally shoot the teller and
14 kill the man or woman, the teller. She's just as
15 guilty, she's the getaway woman, she's as guilty as I
16 am, she may have pulled the trigger herself.

17 Q. If you pled guilty to two aggravated murders, how
18 much time do you expect you're going to serve?

19 A. Hopefully they get together as one. So that
20 means I go to the parole board anywhere between 14 years
21 and 28 years.

22 Q. You figured out exactly how long it's going to
23 take you to get to the parole board now?

24 A. Pretty much.

25 Q. You think you can get to the parole board in as

1 little as 14 years under this deal, am I right?

2 A. It could be, it could be 28 years.

3 Q. Well, let me ask you, how do you expect these two
4 charges to get run together so you could be released by
5 the parole board in 14 years?

6 A. Go in there and do what's expected of me.

7 Q. What's expected of you is to come in here and
8 testify that Weston Howe did these shootings, isn't it?

9 A. What it's expected of me is to come in, tell the
10 Court what happened.

11 Q. If you were to come in here and say Weston didn't
12 do these murders, I did or somebody else did, you
13 wouldn't get those two sentences run together the way
14 you want, would you?

15 A. I probably wouldn't get any. The deal that I
16 wrote would be off if I came and perjured off.

17 Q. Your deal would be off if you didn't get --

18 MR. SLAVENS: Objection.

19 THE COURT: Sustained.

20 BY MR. ARNTZ:

21 Q. You already told us, that the 11 or more times
22 that you perjured yourself under oath last year when you
23 took the oath to tell the truth from that very same
24 witness stand, that those things occurred because you
25 were trying to help yourself, is that right?

1 A. I tried to get the video suppressed and thrown
2 out.

3 Q. And you were trying to help yourself I think you
4 told me a little bit ago?

5 A. Right.

6 Q. And you're trying to help yourself now, aren't
7 you?

8 A. I can't help myself right now.

9 Q. How do we tell when you're telling the truth and
10 when you're lying under oath?

11 MR. SLAVENS: Objection, your Honor.

12 THE COURT: Sustain the objection.

13 BY MR. ARNTZ:

14 Q. In fact, you also expect that if things go as
15 planned and you play your cards right, the prosecutor
16 will actually recommend, recommend on your behalf, that
17 the two sentences be run concurrently?

18 A. He's not going to recommend anything. He's just
19 not going to oppose it.

20 Q. Oh, in other words, the prosecutor at the time of
21 your sentencing could say to the Judge, we oppose
22 running Eloffskey's two life sentences together so he can
23 go to the parole board in 14 years? He could do that?

24 A. He could but he couldn't either. That's between
25 him and Judge Dodge here.

1 Q. But your understanding is that part of your deal
2 here today is that if all goes well, the prosecutor will
3 appear on your behalf at sentencing and say, we don't
4 oppose if you give him two concurrent life sentences
5 instead of making them run one after the other?

6 A. I don't -- I'm not the prosecutor's mouth piece.
7 He can come in here and say, run them wild or run them
8 together at this time. That's his, his choice. It's up
9 to the Judge to go along or go against it.

10 Q. You talked earlier how Walter would carry
11 sometimes a gun loaded or unloaded, and you, yourself,
12 had access to a gun, didn't you?

13 A. I had a gun a couple years ago but as of now, no.

14 Q. When you had that gun a couple years ago, that's
15 when you and Walter were going out as a team doing
16 things, isn't it?

17 A. Yeah, we shot out car windows with BB guns, which
18 is over in the past and I've done time for.

19 Q. And, for instance, when the two of you were
20 running around with loaded guns and shooting things,
21 Weston wasn't around during that, was he?

22 A. No, but them are BB guns, them aren't real guns.

23 Q. That's when you and Walter was running around as
24 a team.

25 MR. SLAVENS: Objection.

1 THE COURT: Sustained. Sustain the
2 question. Ask questions.

3 BY MR. ARNTZ:

4 Q. In fact, the truth is, you were convicted of
5 carrying a concealed weapon back in 1990, isn't that
6 true?

7 A. Yes, I was.

8 Q. And I think you told me if these two life
9 sentences don't get run together, it's going to be at
10 least 40 years, you think, before you go to the parole
11 board?

12 MR. SLAVENS: Objection, your Honor.
13 Asked and answered.

14 THE COURT: Overruled. That will
15 stand.

16 A. You get --

17 BY MR. ARNTZ:

18 Q. I'm sorry?

19 A. You get 14. You get on 10 year sentence or 20
20 year sentence, you only do 14 'cause you get all that
21 good time with it, but then the parole board can go,
22 could go ahead, flop you back for 5.

23 Q. You think the parole board will let you loose --

24 MR. SLAVENS: Objection to what he
25 thinks, your Honor.

1 THE COURT: Sustained.

2 BY MR. ARNTZ:

3 Q. Well, you --

4 A. Parole board isn't going to let nobody loose on
5 14 years on two aggravated murders charge.

6 Q. You been sitting in that chair all day to get
7 those numbers down, haven't you?

8 A. What do you mean getting them down?

9 Q. By helping yourself?

10 A. I'm not helping myself at all.

11 Q. Well, you think your attorney, who is a former
12 prosecutor, did a good job in negotiating a plea
13 bargain?

14 A. Personally, I don't think he did a damn thing.

15 Q. He should have gotten you a better deal than
16 that?

17 A. Yeah, for being a driver of the car.

18 He's got his job to do. I've got mine to do.

19 MR. ARNTZ: That's all.

20 Thank you.

21 THE COURT: Any redirect?

22

23

24

25

REDIRECT EXAMINATION

BY MR. SLAVENS:

Q. Since the date of June 22d, 1992, have you ever seen in its entirety the video that was played today?

A. I seen it one time.

Q. And in its entirety?

A. Yeah, with both my lawyers present.

Q. Okay. All right. And was it sometime after you were indicted?

A. It was after I was indicted, yes.

Q. Okay. Do you know now approximately when that would have been that you would have seen the videos? With reference to the date of June 22d, do you have any idea it was in July or August or do you know?

A. I think it was around September. I'm not sure. Sometime after, three months after I was here.

Q. There's been some discussion in regards to a time that you testified in this court. So the record is clear, you testified, am I correct, at a motion to suppress hearing?

A. Correct.

Q. And you have only testified that one time in this case?

A. Correct.

Q. Before today?

1 A. Correct.

2 Q. And when you testified at that one hearing, all
3 of the questions that were asked of you by defense
4 counsel here, Mr. Arntz, as you read from the
5 transcripts were -- were all of those questions and
6 answers, questions presented to you by your attorney?

7 A. Yes, they were.

8 Q. And at the motion to suppress hearing, were you
9 claiming that the police had somehow or another
10 mistreated you in informing you of your rights and
11 obtaining the statements from you?

12 A. I claimed a lot of things that wasn't true.

13 Q. The purpose of the hearing, and correct me if I'm
14 wrong, was to get the statements that you made to
15 Detective Lawson, Wade Lawson, and the videotape
16 excluded from evidence --

17 A. Correct.

18 Q. -- at your trial if you were to have a trial?

19 A. Right.

20 Q. Now going back to June 22d, or 23rd more
21 specifically, when you do meet with the detectives, how
22 do they treat you?

23 A. They treated me pretty good.

24 Q. Do they explain to you that you're being looked
25 at as a candidate for the charge of aggravated murder as

1 it related --

2 A. They told me that's what I was charged with.

3 Q. -- and that related both to Mr. McDonald --

4 A. McDonald and Blazer.

5 Q. And they didn't hold anything back from you?

6 A. No.

7 Q. And when you pled guilty, you knew the penalties
8 at that time?

9 A. Correct.

10 Q. Now you pled guilty, and it's dated on here, I
11 believe.

12 A. February 5 -- February 13th, I think, 12th, or
13 something like that.

14 Q. That says the above-named defendant appeared in
15 open court this 10th of February, 1993. Would that be
16 close to being correct?

17 A. Correct. Or sometime in there.

18 Q. And when you talked to the detectives, there was
19 a part in the video as to how you thought Polson had
20 fired some shots inside the Blazer house?

21 A. Correct.

22 Q. And how there was some shots fired by Weston Lee
23 Howe, who you called Lee, outside of the Blazer house?

24 A. Correct.

25 Q. Also, on the video though, there was some

1 discussion in regards, I think you even did a
2 demonstration, as to where Weston Lee Howe was and how
3 he was situated at that time McDonald was shot?

4 A. Right.

5 Q. And do you recall seeing the video as to how you
6 demonstrated that?

7 A. Yeah.

8 Q. And those things occurred in your car?

9 A. Correct.

10 Q. And I think, am I correct on, and on the video
11 you indicated that both after the shooting as to
12 McDonald, that Weston Lee Howe and also Walter Polson
13 ran after Mr. McDonald?

14 A. Correct.

15 Q. And I think it was corrected on the video. It
16 indicated Polson was the one who went up and you saw
17 them next with the billfold or at least property of
18 Mr. McDonald?

19 A. Yes.

20 Q. You weren't trying -- well, strike that.

21 And as you sit here today, you, you recognize
22 that your sentencing is to be determined by Judge Dodge?

23 A. Right. He's the one that says run them together
24 or run them wild. That's his choice. He makes up his
25 own mind, nobody else can.